

**STATE OF ILLINOIS**

**ILLINOIS COMMERCE COMMISSION**

<b>Maxine Johnson</b>	:	
<b>-vs-</b>	:	
<b>Peoples Gas Light and Coke Company</b>	:	
	:	<b>02-0680</b>
<b>Complaint as to inaccurate billing,</b>	:	
<b>erroneous balance due and estimating</b>	:	
<b>billing in Chicago, Illinois.</b>	:	

**POST-EXCEPTIONS PROPOSED ORDER**

**By the Commission:**

On October 21, 2002, Maxine Johnson filed a Complaint with the Commission. In that Complaint, Ms. Johnson alleged that Peoples Gas Light and Coke Company ("Peoples") did not credit her for a payment she made in the amount of \$200.00, which led to disconnection of service. Ms. Johnson averred that she made this payment in March of 2002, and it was never credited to her account. She sought a credit in the amount of \$200.00, restoration of gas service, and the refund of allegedly improperly-imposed late charges, security deposits and reconnection charges. (Complaint at 1-2). At a status hearing conducted on October 21, 2003, Ms. Johnson waived her right to have this matter adjudicated within one year from the date of filing.

Pursuant to notice given in accordance with the law and the rules and regulations of the Commission, this matter came on for trial before a duly authorized Administrative Law Judge (an "ALJ") of the Commission at its offices in Chicago, Illinois, on December 2, 2003. Ms. Johnson testified on her behalf, and she called Ms. Kay Staley, a customer service representative at Peoples, as an adverse witness. Mr. Brian Schmoldt, a Special Services Representative, also testified on behalf of Peoples. At the conclusion of that hearing, the record was marked "Heard and Taken."

A Proposed Order was served on the parties on September 2, 2004. Ms. Johnson filed Exceptions on October 1, 2004, even though they were due to be filed on September 16, 2004. Ms. Johnson filed no motion for an extension and she did not ask for her Exceptions to be filed instanter.

**The Procedural History**

On August 6, 2003, Peoples filed a Motion to Dismiss, stating that it recently paid Ms. Johnson \$255.14, which represented the \$200.00 mentioned in Ms. Johnson's Complaint, and all late payment charges assessed on Ms. Johnson's account since March of 2002. Also, Ms. Johnson's account was not disconnected any time in 2002 or in 2003, and, therefore, Ms. Johnson was not assessed any reconnection charge or security deposit. Further, since March of 2002, Peoples obtained actual meter readings on Ms. Johnson's meter.<sup>1</sup> Peoples contended that given these facts, the issues raised in Ms. Johnson's Complaint were now moot, and, it should be dismissed. (Motion to Dismiss at 2-3).

Ms. Johnson filed a Response to that Motion on August 20, 2003. In that Response, Ms. Johnson contended that there were many issues in her Complaint, and payment of the \$200.00 was but one element of a multi-layered "ordeal" derived from Peoples' practices of estimating bills and overcharging. Ms. Johnson also claimed that she had outstanding discovery disputes with Counsel for Peoples. Ms. Johnson claimed that the erroneous billing regarding the \$200.00 resulted in erroneous termination of gas and "harassing collection practices." (Response to Motion to Dismiss at 1-2). A Proposed Order issued on August 28, 2003, in which, the ALJ concluded that Ms. Johnson did not state facts in her response indicating that anything claimed in her complaint remained unresolved.

On September 4, 2003, Ms. Johnson filed a Brief on Exceptions. In that Brief, Ms. Johnson detailed specific conversations she had with a Peoples account representative, who, according to Ms. Johnson, promised to credit her account for \$200.00 but did not. Ms. Johnson stated that payment of the \$200.00 did not relieve her from incurring estimated carry-overs (from prior to March of 2002) and other estimations which occurred on her account since March of 2002. Ms. Johnson further averred that the \$200.00 amount in her Complaint was merely an estimation of how much money Peoples owed her. She argued that therefore, the issues raised in her Complaint were not moot. (Complainant's Brief on Exception at 1-2).

On September 8, 2003, the ALJ issued a ruling stating that Ms. Johnson set forth various matters in her Brief on Exceptions that she believed remained in controversy. Therefore, the ALJ concluded that Peoples' Motion to Dismiss must be denied.

## **The Evidence Presented**

Ms. Staley testified that Peoples sent Ms. Johnson a "lump sum" bill in the amount of \$1,378.20 for the entire period from February 25, 2000 to December 31, 2001. (Tr. 80). Peoples did not send Ms. Johnson any gas bills from April of 2001 to December of 2001. (Tr. 239). This "lump sum" bill occurred because a serviceman for Peoples had discovered

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<sup>1</sup> Attached to the Motion to Dismiss was the affidavit of Mr. Schmoldt. Mr. Schmoldt stated that he issued the credit and he reviewed Ms. Johnson's account and determined that Ms. Johnson's account was not disconnected in 2002 or in 2003 and, since March of 2002, Peoples has obtained actual meter readings of her meter, every month.

that the meters in the two-flat in which Ms. Johnson resided became crossed. Because Ms. Johnson was not being billed for her meter, adjustments were made to her account. (*Id.* at 83-84). \$1,378.20 includes credits for payments Ms. Johnson made during that time period. (*Id.* at 85).

Ms. Johnson contended that Peoples never credited her for a \$200.00 payment she made in March of 2002, however, she provided no proof that she made this payment. (See, e.g., Tr. 142). Also, Ms. Staley prepared a thorough review of Ms. Johnson's account (a "transcript") and she determined that Peoples, in fact, credited Ms. Johnson for this \$200.00 payment. (Tr. 159; 252; Respondent Ex. 1). Peoples received this payment on March 11, 2002. (Tr. 280). And, Ms. Johnson testified that, during the time period in question, she only made one \$200.00 payment to Peoples. (Tr. 234). On January 7, 2002, Ms. Staley sent Ms. Johnson a complete "transcript" of her account, including bills and payments since December of 1999. (Tr. 289; Respondent's Ex. 2).

Ms. Johnson also averred that when Peoples "uncrossed" the meters in the two-flat in which she resided, it continued to estimate meter readings, even though her bills stated that the meter readings were actual meter readings, not estimates. (See, e.g., Tr. 236). However, Ms. Johnson never looked at the dials on her gas meter to see whether those numbers corresponded with what her gas bills said she used. (Tr. 246).

Ms. Johnson pointed out that on the "transcript" of her account, the entry for December 31, 2001, was marked "estimated." (Tr. 319-21). Mr. Schmoldt was assigned to Ms. Johnson's case during the time period when Ms. Staley was not in the office. (Tr. 192). Mr. Schmoldt stated that this amount was incorrectly labeled "estimated" due to a typographical error; in fact, there was an actual meter reading at that time. (*Id.*).

Mr. Schmoldt testified that since the time when Peoples credited Ms. Johnson's account in the amount of \$255.00, it has since debited Ms. Johnson's account in that amount. (Tr. 192). Ms. Staley testified that Ms. Johnson's gas service has never been shut off. (Tr. 260-61).

Subsequent to trial, Ms. Johnson submitted her gas bills for December, 2003, and January, 2004. These documents were submitted after the trial and after the record was marked "Heard and Taken."

Ms. Johnson filed Exceptions on October 1, 2004. She averred that the transcripts of the trial were "doctored" and that the witnesses at the trial committed perjury. (Johnson Brief on Exceptions at 1-2). She also stated that Peoples engaged in a "corporate cover-up," a "switcheroo" and "sabotage." (*Id.* at 3). Further, Ms. Johnson again averred Peoples never credited her for the \$200 payment. (*Id.* at 2). Ms. Johnson did not state facts supporting these conclusions.

## **Analysis and Conclusions**

There is no evidence establishing that Peoples' billing practices during the time period in question violated the Public Utilities Act. Credible evidence established that Peoples credited Ms. Johnson for the \$200.00 payment in March of 2002. Because Ms. Johnson received timely credit for this payment, there are no late charges associated with, or interest accrued on, the \$200.00 payment.

Credible evidence also established that Peoples used actual meter readings during the time period in question. Therefore, there is no evidence indicating that the use of estimated meter readings caused improper billing. Further, Ms. Johnson's gas was not shut off during the time period in question. Therefore, there are no improper charges resulting from wrongful termination of service. Finally, there is no evidence of "harassing collection" resulting from attempts to collect the \$200.00 or improper termination of service. Ms. Johnson's complaint should be dismissed, with prejudice.

Ms. Johnson's gas bills for December, 2003, and January, 2004 were submitted after trial and after the record was marked "Heard and Taken." Since the time for Ms. Johnson to present evidence was during trial, these documents were not considered. Moreover, these bills just establish what Ms. Johnson was billed for those two months, which is not germane to the issues here.

Ms. Johnson's Brief on Exceptions was not timely filed and it was, therefore, not considered. Even if it were considered, Ms. Johnson's summary conclusions that the transcripts were "doctored," and that the witnesses for Peoples committed perjury, sabotage and a "switcheroo" did not contain facts supporting such conclusions. These conclusions, therefore, cannot be considered. (See, e.g., *Griffen v. Universal Casualty*, 274 Ill. App. 3d 1056, 1065, 654 N.E.2d 694 (1<sup>st</sup> Dist. 1995)). It is not even clear whether, when Ms. Johnson refers to "doctored transcripts," she is referring to the transcripts of the proceedings, or, the summary of Ms. Johnson's account, prepared by Ms. Staley, which, Ms. Staley referred to as a "transcript." This ambiguity only illustrates why it is necessary to support legal and factual conclusions with specific facts. And, Ms. Johnson's argument that she did not receive a \$200 credit from Peoples, without more, does not establish that she did not receive this credit.

## **Findings and Ordering Paragraphs**

The Commission, having considered the entire record and being fully advised in the premises, is of the opinion and finds that:

- (1) Peoples Gas Light and Coke Company is a "public utility" as is defined in the Public Utilities Act;
- (2) the Commission has jurisdiction over the parties hereto and of the subject-matter;

- (3) the recitals of fact and conclusions of law in the prefatory portion of this Order are supported by the record and are hereby adopted as findings of fact and conclusions of law;
- (4) the Complaint filed by Maxine Johnson on October 21, 2002, is dismissed, with prejudice.

IT IS THEREFORE ORDERED that the Complaint filed by Maxine Johnson on October 21, 2002 should be dismissed, with prejudice.

IT IS FURTHER ORDERED that subject to the provisions of Section 10-113 of the Public Utilities Act and 83 Ill. Admin. Code Section 200.880, this Order is final; it is not subject to the Administrative Review Law.

By Order of the Commission this 10<sup>th</sup> day of November, 2004.

(SIGNED) EDWARD C. HURLEY

Chairman